

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**LAND DIVISION**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION No. 226 OF 2023**

*(Originating From Civil Appeal No. 141 Of 2015)*

**BETWEEN**

**WAZIRI JUMA MSIGILI.....APPLICANT**

**VERSUS**

**KISASE GINGHE MARWA.....RESPONDENT**

**RULING**

*Date of last Order:22/08/2023*

*Date of Judgment:28/08/2023*

**K. D. MHINA, J.**

This is an application brought by way of Chamber summons made under section 47 (2) of the Land Disputes Court Act, Cap 216 (R: E 2019) and Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E 2019.

The applicant, is seeking the following orders against the respondent:

*(a) That, the Honourable Court be pleased to grant Leave for the Applicant to appeal to the Court of Appeal against the Ruling and Drawn Order of Hon. Mgeyekwa, J. In Land Appeal No. 141 of 2015 delivered on 5th May 2022.*

*(b) Any other order(s) /reliefs(s) the Honourable Court may deem fit and just to grant in the circumstances;*

The grounds for the application were expounded in the supporting affidavit, which Mr. Anindumi Jonas Semu, the counsel for the applicant, swore in support of the application.

Briefly, as per paragraph 4 of the affidavit the applicant complained that the presiding Judge erred in law by making the decision on the finding she made after hearing without summoning the parties to address the said issues as to the appearance of different dates on the exchequer receipt. Therefore, that is the basis of his intention to appeal as the matter requires the attention of the Court of Appeal of Tanzania.

On his side, the respondent through the services of Mr. David Raphael, learned advocate did not file the counter affidavit. Further, on 23 August 2023 when the matter was called on for hearing, Mr. Raphael informed the court that they did not resist the application.

Therefore, though the respondent did not object the application still it is the duty of this Court to look into whether the ground raised is worth to be considered by the Court of Appeal. This is because the duty of this Court is to "filter" the grounds worth for the consideration of the Court.

In **Dorina N. Mkumwa vs. Edwin David Hamis**, Civil Appeal No.53 of 2017 (Tanzlii), the Court of Appeal held that it does not expect this Court to act as an uncritical conduit to allow whatsoever the intending appellant proposes to be perfunctorily forwarded to the Court of Appeal.

Therefore, having considered the chamber summons, its supporting affidavit, the made by the learned counsel for the applicant, the issue that has to be resolved is;

*"Whether there is the existence of points of law worth to be considered by the Court of Appeal".*

Before discussing to the merits or demerits of the application, it is essential to highlight the factors to consider before granting or refusing an application for leave to appeal to the Court of Appeal, the factors are as follows;

**One**, the Court must ascertain if there is a legal point worth being considered by the Court of Appeal.

**Two**, the Applicant must demonstrate that the intended appeal raises issues of general importance or novel point of law.

**Three**, there must be prime facie grounds meriting an appeal.

**Four**, if the matters are of public importance and raise serious issues of misdirection or non-direction results in a failure of justice.

**Five**, there must be serious and contentious issues of law or fact fit for consideration by the Court of Appeal

In this matter as I alluded to earlier, the only point to be referred to the Court of Appeal in this application for leave to appeal is found in paragraph 4 of the affidavit. The point read as follows;

*"Whether the presiding Judge erred in law by making the decision on the finding she made after hearing without summoning the parties to address the said issues as to the appearance of different dates on the exchequer receipt".*

In a simple analysis this means that the applicant is complained to be denied the right to heard.

On this, by a mere looking at page 7 of impugned decision i.e Land Appeal No. 141 of 2015, I am persuaded by the applicant's application.

In **Erasto Daima Sanga vs. Peter Mwonga**, Misc. Land Application No. 66 of 2019 HC (Tanzlil) it was held that;

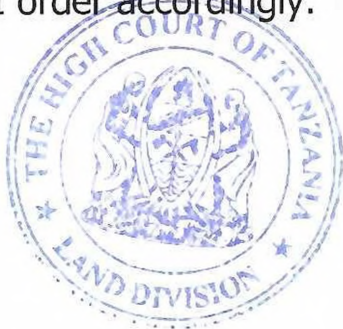
*"I think it is now settled that, for an application for leave to appeal to succeed, the applicant must demonstrate that the proposed appeal raises contentious issues worth taking to the Court of Appeal or are of such public importance, or contain serious issues of misdirection or non direction likely to result in a failure of justice and worth consideration by the Court of Appeal....In an application of this nature, all that the Court needs*


*to be addressed on, is whether or not the issues raised are contentious....the Court cannot look at nor decide either way on the merits or otherwise of the proposed grounds of appeal."*

From the above discussion and the cited decision, I hold that there is a legal point worth being considered by the Court of Appeal regarding whether there was a right to be heard or not. And since it is trite that the right to be heard is not only a constitutional right but also a rule of natural justice, then the point raised by the applicant is worth of being considered by the Court of Appeal. Without going further, I think I shall end here.

Therefore, this application has merit and it is hereby granted. I order no costs since neither party prayed for the same.

I order accordingly.



  
**K. D. MHINA**  
**JUDGE**  
**28/08/2023**